

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

JAN and LINDA STRUCKMAN,)	
)	DOCKET NO: IT-1997-4
Appellants,)	
)	
-vs-)	
)	FACTUAL BACKGROUND,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,)	ORDER AND OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The position of the Respondent, Department of Revenue, in the above-entitled appeal was heard on July 19, 2000, in the City of Billings, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayers, represented by Alfred (Gene) Bridges, agent, moved this Board to continue the hearing due to lack of preparation caused by the illness of his client. This motion was made at the commencement of the July 19 hearing in Billings. The Board denied the motion, but allowed the taxpayers' agent 30 days upon receipt of the transcript of the Department of Revenue testimony and evidence to submit the taxpayers' arguments. The Department of Revenue was allowed 30 days to respond to the taxpayers' written arguments.

The Department of Revenue (DOR), represented by David Carter, legal intern, Michele Crepeau, tax counsel, and Jim McKeon, tax specialist, presented testimony in opposition to the appeal. Department of Revenue testimony was presented and exhibits were received. Upon receipt of the taxpayers' written arguments, and the DOR response to those arguments, the Board then took the appeal under advisement. The Board having fully considered the testimony, exhibits, post-hearing submissions, and all things and matters presented to it by all parties, finds and concludes as follows:

STATEMENT OF THE ISSUE

The dispute revolves around proper substantiation of business expenses by the taxpayers. Additional tax and interest for tax year 1994 was assessed to the taxpayers as a result of an audit of business expenses deducted on Schedule C of their Montana Individual Income Tax return for 1994. The taxpayers dispute the assessment.

FACTUAL BACKGROUND

1. The Struckmans are engaged in the business of processing serving and bad check collections in the Billings, Montana area.

2. The aforementioned audit was conducted as a result of a joint Internal Revenue Service (IRS)/Montana Department of Revenue (DOR) project that identified returns prepared by Cody

and Company.

3. Under the joint project, Revenue Agent James Moody was assigned the Struckmans 1994 return. The audit was limited to an examination of a Schedule C, which reports profit or loss from a sole proprietorship.

4. The Struckmans were first contacted in 1995 to schedule an audit of their 1994 return.

5. An audit conference between the taxpayers and the DOR was conducted in 1996. The Struckmans were represented by Sharon Tweten, at that time a representative of James Otis and Company. (James Otis and Company, a tax consulting firm, retained Cody and Company.)

6. As a result of this conference, certain business expense deductions were disallowed as either unsubstantiated or unallowable. The net result was that the taxpayers were issued a notice of additional assessment in the amount of \$3,483.08.

7. The taxpayers timely appealed this determination and requested a hearing with the DOR.

8. On July 10, 1996 an informal conference was held with the DOR. The Struckmans were represented by Sharon Tweten. The DOR was represented by James Moody.

9. The hearings examiner, Bureau Chief Neil Peterson of the DOR's Income and Miscellaneous Tax Division, adopted the position of the taxpayers as to expenses claimed, with the

exception of a deduction taken for charitable contribution and for vehicle expense.

10. The taxpayers timely filed an appeal of the hearings officer's decision on December 6, 1996 with the Director of the DOR.

11. The director issued a final agency decision on April 3, 1997 in which the findings of the hearings examiner were adopted.

12. The taxpayers timely filed an appeal of that decision with this Board on April 28, 1997.

13. This Board held a hearing on July 19, 2000 during which the position of the DOR was heard.

14. The taxpayers' representative, Gene Bridges, filed a motion for continuance at the outset of the hearing on the grounds that he was unprepared to present the taxpayers' case due to the extreme illness of Mr. Struckman. Said motion was denied. Mr. Bridges was given the opportunity to present the taxpayers' arguments in the form of a post-hearing brief. The DOR was allowed to respond to the taxpayers' written arguments.

TAXPAYERS' CONTENTIONS

The taxpayers' agent, Gene Bridges, was allowed the opportunity to present the taxpayers' case in the form of a brief to be submitted to this Board on or before August 26, 2000. Per Mr. Bridges' request, a transcript of the July 19, 2000 testimony

of the DOR was prepared and mailed to Mr. Bridges on July 26.

Neither the taxpayers nor Mr. Bridges presented the brief required by this Board's order dated July 26, 2000.

DEPARTMENT OF REVENUE CONTENTIONS

Mr. McKeon testified that the 1994 Montana individual income tax return of Jan and Linda Struckman was audited as a result of a joint Department of Revenue/Internal Revenue Service audit project in which various returns were identified and selected based on criteria determined for this project. The criteria, in this case, was reviewing business expenses on Schedule C.

DOR Exhibit C is a copy of a statement of adjusted income tax liability for tax year 1994, issued by the DOR on April 5, 1996. This statement shows an adjusted amount due of \$3,483.08 due to disallowance of certain items of business expense claimed by the taxpayers. The taxpayers had claimed \$50,089 in business expense on their Schedule C. The DOR allowed \$8,606.11, a difference of \$41,482.89.

DOR Exhibit D is a copy of an amended statement of adjusted income tax liability issued on November 29, 1996 as a result of the decision rendered from an informal conference with the Department of Revenue. This document shows a total due and owing for tax year 1994 of \$865.65 and contains the statement "The adjustment of \$21,179.00 to income is to get the Schedule

"C" business income from a negative \$5,759.00 to a positive (net profit) change of \$3,302.00 in the standard deduction. This also results in an OFLT (old fund liability tax) tax of \$31.00 based on a rate of .002 on the net profit of \$15,420.00. This adjustment should bring this return into compliance with the hearing information."

DOR Exhibit E is a copy of the original 1994 Montana individual income tax return for Jan and Linda Struckman, which was filed with the Department in 1995.

DOR Exhibit F is a copy of the adjusted tax return, prepared by the DOR, of Jan and Linda Struckman based on the DOR's final decision and final adjustments dated November of 1996.

DOR Exhibit G is a copy of the DOR's final agency decision, dated April 3, 1997, in which the DOR director adopted the findings of the DOR hearing examiner from the informal conference. Exhibit G also contains a copy of the hearings examiner's findings dated November 12, 1996.

According to Mr. McKeon, one of the disallowed deductions made by the taxpayers was a deduction for charitable contributions on their Schedule C. Charitable contributions are considered an individual expense and deduction and would be deducted on a tax return as an itemized deduction and not as a business expense.

Another disallowed item was the amount of mileage expense claimed by the taxpayers. Taxpayers are required to keep adequate records indicating actual miles traveled throughout the year to substantiate correctly the amount of miles that would be claimed for business versus the amount of miles claimed for personal use on a vehicle. The DOR contends that the taxpayers did not keep adequate records concerning such claimed mileage expense. Realizing that the nature of the business in which the taxpayers were engaged (process serving) would require substantial use of an automobile, but in the absence of sufficient documentation, the DOR hearings examiner applied the *Cohan* rule which provides that, if substantial records are not available, yet there is reasonable proof that the use of a vehicle is required, the amount that may be applicable to an expense may be estimated. The DOR may then utilize that estimated amount to determine what it deems an allowable deduction.

The DOR hearings examiner allowed 50 percent of the mileage expense claimed by the taxpayers as an allowable deduction.

On September 15, 2000, the DOR filed a request for final determination in this matter due to the fact that the taxpayers failed to submit their written brief in support of their appeal by August 26, 2000. Said request is hereby

granted.

BOARD DISCUSSION

In the absence of substantial and credible taxpayer evidence in support of the appeal, the Board finds that the DOR has presented sufficient documentation to support its assessment.

The appeal of the taxpayers is hereby denied and the decision of the Department of Revenue is hereby affirmed.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter pursuant to Section 15-2-302, MCA.

2. The appeal of the taxpayers is hereby denied and the decision of the Montana Department of Revenue is hereby affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the taxes and interest assessed are properly due and owing.

DATED this 18th day of September, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of September, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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